

PT 02-16

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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BOYS & GIRLS CLUBS OF THE	)		
MISSISSIPPI VALLEY, INC.	)	A.H. Docket #	00-PT-0050
Applicant	)	Docket #	99-81-91
	)		
v.	)	Parcel Index #	MO 5934
	)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Francis Van Hooreweghe, Van Hooreweghe, Fackel & Thuline for the Boys and Girls Clubs of the Mississippi Valley, Inc.; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held on September 28, 2001, to determine whether or not Rock Island County Parcel Index No. MO 5934 qualified for exemption during the 1999 assessment year.

Mr. James Farber, executive director of the Boys and Girls Clubs of the Mississippi Valley, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 1999 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my

recommendation that the exemption be granted for the 1999 assessment year. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Rock Island County Parcel Index No. MO 5934 did not qualify for a property tax exemption for the 1999 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1. (Tr. p. 8)

2. On January 10, 2000, the Department received the request for exemption of all of lots number 13, 14, 15 and 16 in block 10 in Pitts, Gilbert, and Pitts 2<sup>nd</sup> addition, Moline, Illinois<sup>1</sup>. On June 2, 2000, the Department denied the requested exemption for Parcel Index No. SM 3403, finding that the property was not in exempt use. On June 22, 2000, the Department issued a Supersede Certificate to the applicant for Parcel Index No. MO 5934<sup>2</sup>. On June 22, 2000, the applicant timely protested the denial and requested a hearing. The hearing on September 28, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

3. The applicant acquired the subject parcel by a quitclaim deed dated July 1, 1999<sup>3</sup>. (Plaintiff's Ex. No. 1)

4. Located on the subject property is a 10,000 square foot one story building that the applicant intends to use for its youth education and recreation programs. (Dept. Ex. No. 1)

5. The applicant has outgrown its location and needs a larger facility. (Tr. p. 19)

6. The subject property was the former J & O Compressor facility. (Dept. Ex. No. 1)

7. Prior to the acquisition of the subject parcel, the applicant felt it necessary to have an environmental assessment done of the property to ensure it was economically feasible for the applicant to proceed. (Tr. pp. 14-16)

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<sup>1</sup> The application had SM 3403 as the Parcel Index No. for the subject property. (Dept. Ex. No. 1)

<sup>2</sup> Parcel Index No. MO 5934 is the proper number for this parcel. The Department issued the supercede certificate pursuant to information received from the county.

<sup>3</sup> The initial deed submitted with the application was dated August 31, 1999, and stated that it was being re-recorded due to a scrivener's error, (Dept. Ex. No. 1) At the hearing the applicant submitted the original deed.

8. In May 1999 an environmental services company assessed the subject property to assist the applicant in addressing potential environmental issues associated with acquiring the property. (Plaintiff's Ex. Nos. 2,3; Tr. p. 15)

9. Pursuant to the direction of environmental services company, on July 28, 1999, American Waste Haulers, Inc. removed special and hazardous waste, oils, and other fluids contained in small pails, 55-gallon steel drums, and a large above ground storage tank. An analysis was done of the soil by the environmental services company over several months to ensure no chemicals were present on the property. (Plaintiff's Ex. Nos. 2, 3)

10. The applicant received the first plans for the rehabilitation and remodeling of the building in August 1999. Prior to that, the building services division of the Boys and Girls Clubs of America, applicant's parent company, had done preliminary plans. Those preliminary plans were relied upon by the architects that submitted the first plans. The design work by the architect was substantially completed by January 2001. Final architectural drawings approved by the city went out for bids in February 2001. No construction was done on the site in 1999. (Applicant's Ex. No. 5; Tr. pp. 17-18, 27-28)

11. In 1999 environmental testing of the site, both inside and outside was done. Fencing had to be removed for construction to begin. The applicant was actively involved with the architect with plans going back and forth before the final drawings for the project could be approved. (Tr. p. 29)

12. The applicant was incorporated under the general not for profit corporation act on July 21, 1992 for:

The purpose of the corporation shall be to provide behavior guidance and to promote the health, social, educational, vocational and character development of youth, irrespective of race, color, creed or national origin; to receive, invest and disburse funds; and to hold property for the purposes of the corporation. No part of the income or assets of this corporation shall inure to the benefit of any private individual or member. This corporation shall have no capital stock, its object and purpose being solely of a benevolent character, and not for individual pecuniary gain or profit to its members. (Dept. Ex. No.

1)

13. The mission of the Boys and Girls Clubs of America is to enable and inspire young people, especially those from challenging circumstances, to realize their full potential as productive, responsible, and caring adults. (Tr. p. 19)

14. In a letter to the Department dated May 10, 2000, the applicant writes “Our plan is to begin fundraising this summer and begin renovations this fall or early winter with completion targeted for summer 2001.” As of the date of the hearing, the applicant has raised \$550,000 in the community to remodel the building. (Tr. p. 11)

15. The applicant anticipates 100 children per day will utilize the building on the subject parcel. (Tr. pp. 18-19)

16. As of the date of the hearing the applicant was still remodeling the property. The work was almost completed. The applicant was still in the process of working on the parking lot and outdoor basketball court. The applicant is still involved in some remedial work relating to environmental factors with the grounds to be used as the parking lot. (Tr. p. 18-20, 28-29)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel.

Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all institutions of public charity share the following distinctive characteristics:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,

- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2<sup>nd</sup> Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

I take administrative notice of the fact that the Department issued its decision finding that the subject property was not in exempt use. Therefore, the Department has determined that the applicant is a charitable organization and the remaining question before me is whether the applicant's use of the subject parcel in 1999 qualified as charitable.

Illinois Courts have consistently held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1<sup>st</sup> Dist. 1977); and Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2<sup>nd</sup> Dist. 1987).

Weslin, the seminal case dealing with adaptation concerns the construction of a multi-million dollar hospital. In 1980 Weslin began to study ways to expand and continue its provision of health services. In 1981 it employed long-range planning consultants who recommended buying the 30-50 acres for the planned construction. In 1982 a second consultant was hired to make in depth studies of health care needs and a financial feasibility study. In 1983, Weslin's board recommended buying the 24.309 acres; the board approved the purchase for \$2,197,000.00; Weslin met with architects to develop a master site plan and schematic drawings; an ad hoc planning committee approved the plan; and the physical adaptation of the property was

begun with landscaping and the construction of berms. In 1984 the construction manager was hired, the final design and changes were completed, and the ground breaking ceremony was held. The urgent care center was completed in 1985. The court found that there was sufficient development and adaptation to grant the exemption in 1983.

For the parcel herein, in 1999 environmental testing of the site, both inside and outside was done. Prior to the acquisition of the subject parcel, the applicant felt it necessary to have an environmental assessment done of the property to ensure it was economically feasible for the applicant to proceed. Once it was determined that it was feasible, and during the year at issue, the applicant purchased the property and had the waste and hazardous substances removed. Repeated soil testing was done to ensure no additional hazards were present. Also during the taxable year in question, the fencing had to be removed for construction to begin. The applicant was actively involved with the architect with plans going back and forth for the final drawings for the project, which were completed in 2001. All of these steps are necessary and part of the renovation and construction needed to adapt the subject parcel for the applicant's exempt use, which involves children. I find that just as in Weslin, the applicant has demonstrated that there was sufficient adaptation done in 1999 to qualify for exemption

Based upon the foregoing, it is recommended that Rock Island Parcel Index No. MO 5934 be exempt from property taxation for the period of July 1, 1999 through December 31, 1999, or for 50% of the 1999 assessment year, the portion of that year that the applicant owned the property.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge

March 19, 2002